

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS**

DAVID A. STEBBINS

PLAINTIFF

v.

NO. 3:17-CV-03092-TLB

**STATE OF ARKANSAS, ARKANSAS
REHABILITATION SERVICES, AND
AMY JONES**

DEFENDANT

**RESPONSE IN OPPOSITION TO PLAINTIFF'S
MOTION FOR SANCTIONS (D.E. 91)**

Come now the Defendants, the State of Arkansas, Arkansas Rehabilitation Services (“ARS”), and Amy Jones, by and through their attorneys, Attorney General Leslie Rutledge and Senior Assistant Attorney General Christine A. Cryer, and for their Response in Opposition to Plaintiff's Motion for Sanctions (de 91), state as follows:

1. Plaintiff alleges the Defendants should be sanctioned because they cut and pasted portions of their motion to dismiss into their response in opposition to Plaintiff's second motion for summary judgment. The basis for Plaintiff's argument is based on res judicata, or some other similar principle. Plaintiff's argument misses the mark.

2. In their motion to dismiss, Defendants acknowledged Plaintiff has “disabilities.” Defendants argued though that he is not a “qualified” with a disability, as required by Title II, because he does not meet the “essential eligibility requirements” for receiving services from Defendant ARS. As this was a motion to dismiss, no documents were attached in support of their arguments.

3. In ruling on the motion, the Magistrate Judge concluded that, “at this stage of the proceeding,” Plaintiff had alleged sufficient facts to state a plausible discrimination claim under the ADA. (DE 51) There was absolutely nothing in the Report and Recommendation that precluded or estopped the Defendants from making the same arguments in subsequent pleadings.

4. In support of their response to Plaintiff’s second motion for summary judgment, Defendants reasserted their argument that under Title II, Plaintiff is not a “qualified” individual. In addition, Defendants attached documents in support of their argument. That is precisely what the Defendants were supposed to do at this stage of the proceedings. There was absolutely nothing “frivolous” about their actions.

5. It is interesting to note that in Plaintiff’s first motion for summary judgment, he argued he was entitled to judgment as a matter of law on his three claims. He attached documents, including the Psychological Examiner’s Report, correspondence from Amy Jones regarding his ineligibility, and a redacted portion of one medical record. (DE 25 – 26) In his second motion for summary judgment, Plaintiff argues the same claims, attaches most if not all of the original exhibits, and incorporates by references all of his prior pleadings. Plaintiff does not offer any explanation as to why he can raise previously submitted arguments, and yet the Defendants should be barred from responding.

6. Plaintiff’s second claim regarding the alleged “frivolousness” of the Defendants’ response centers around their establishing that Plaintiff has failed to

meet one of the First Amendment Retaliatory elements. Plaintiff's response is nonsensical and does not establish the nonexistence of a material fact.

7. Plaintiff's motion for sanctions is baseless and borderlines on frivolous itself.

WHEREFORE, Defendants respectfully request this Court deny Plaintiff's motion, and for any and all other just and proper relief to which they may be granted.

Respectfully submitted,

Leslie Rutledge
Attorney General

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CERTIFICATE OF SERVICE

I, Christine A. Cryer, Senior Assistant Attorney General, do hereby certify that on October 20, 2017, I electronically filed the forgoing with the Clerk of the Court using the CM/ECF system.

I, Christine A. Cryer, hereby certify that on October 20, 2017, I mailed the document by U.S. Postal Service to the following non CM/ECF participant:

Mr. David Stebbins
123 W. Ridge St., Apt. D
Harrison, Arkansas 72601

/s/ Christine A. Cryer